IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP.NPD.No.3209 of 2015

M.Tikamchand Kochar ..Petitioner/Appellant/Respondent

Vs.

Rajni C.Maher(HUF) ..Respondent/Respondent/Petitioner

PRAYER:The Civil Revision Petition is filed under Section 25 of the Tamil Nadu Buildings / Lease and Rent Control Act, 1960 praying to set aside the judgment and decree in RCA.No.705 of 2011 dated 13.11.2014 on the file of the Hon'ble VII Judge, Small Causes Court, Chennai confirming the fair and decreetal order in RCOP.No.2024 of 2009 dated 12.04.2011 on the file of the XII Judge, Small Causes Court, Chennai by allowing the Civil Revision Petition.

For Petitioner: Mr.Sandeep Samir Shah
for M/s.Shah and Shah

For Respondent: Mr.K.P.Ashok

ORDER

This Civil Revision Petition is directed as against the judgment and decree passed in RCA.No.705 of 2011 dated 13.11.2014 on the file of the VII Judge, Small Causes Court, Chennai confirming the fair and decreetal order in RCOP.No.2024 of 2009 dated 12.04.2011 on the file of the XII Judge, Small Causes Court, Chennai thereby partly allowed the petition filed for fair rent and fixed at Rs.11,600/- as monthly rent payable by the petitioner herein.

2. Mr.Sandeep Samir Shah, the learned counsel for the petitioner would submit that the petitioner is a tenant. The respondent filed petition for fixing fair rent for the petition premises. He further submitted that the petitioner's engineer filed report that the plinth area of the building only at

1199.87 square feet, whereas the trial court had taken into account as per the construction agreement, that too, without producing construction agreement for the petition premises before the trial court. He further submitted that the petition premises is a flat and amenities are common for all the flat owners and as such allowances fixed at 15% insofar as basic amenities are concerned are higher side. Insofar as Schedule 1 amenities are concerned, the respondent failed to prove that the doors are made up with teakwood. Therefore, the amenities under Schedule 1 have to be worked out for each of the amenities. Therefore, no teakwood is used and the building has to be described as type 3 building and depreciation have to be worked out at 2%. In support of his contention, the learned counsel for the petitioner relied upon the judgments in the case of A.Emberumanar and another vs. K.Raghava reported in (1987) TLNJ 307 and in the case of Bombay Tyres International Ltd. vs Express Newspapers Private Ltd reported in (1987) 2 MLJ 191.

3. Per contra, Mr.K.P.Ashok, the learned counsel for the respondent would submit that the petition premises is situated at Barnaby Road, Kilpauk, Chennai and the value of the land is more than Rs.3 crores per ground. The plinth area occupied by the petitioner is 1375 square feet. Originally this premises was rented out to the petitioner for monthly rent at the rate of Rs.5000/-. Now the trial court fixed only at Rs.11,600/- and as such the respondent challenged the same for enhancement of fair rent. Unfortunately the said petition was also dismissed and confirmed the order passed by the learned Rent Controller. He further submitted that even as per the report filed by the petitioner's engineer, classification of the building is type 1 clause A, and calculated depreciation at 1%. Now the petitioner cannot take different stand beyond the report filed by his engineer. In fact, the basic amenities are concerned, both the engineers have admitted and the court below fixed 15% towards basic amenities considering the existence of three basic amenities which were duly admitted by both the engineers. Therefore, the judgments cited by the learned counsel for the petitioner are not applicable to the case on hand.

4. Heard Mr.Sandeep Samir Shah, the learned counsel for the petitioner and Mr.K.P.Ashok, the learned counsel for the respondent.

5. The petitioner is tenant under the respondent in respect of the petition premises for monthly rent of Rs.5,000/-. The plinth area occupied by the petitioner is 1375 square feet and it is undivided share of 480 square feet. Admittedly all the three basic amenities are available for petition premises and the classification of the building is type I. The respondent filed RCOP in the year 2009. The petition premises is

situated at Flat No.112, First Floor, Door No.1, Barnaby Road, Kilpauk, Chennai-10. Admittedly it is a posh area and as per the sale deed of the property, the land value at Rs.94,80,000/- per ground.

6. Now the point for consideration is that whether the rates of depreciation fixed by the court below is correct or not. When the building built in lime mortar and in which teak has been used through out the rate of depreciation at 1%, for the buildings built partly of brick in lime mortar and partly of brick in mud and in which teak has been used, the rate of depreciation would be 1.5 %.

7. On perusal of the documents would reveal that the petition premises is type 1 clause A and calculated the depreciation at 1% by both engineers of the petitioner as well as the respondent. Further, there is no evidence to show that the respondent did not use teakwood for construction. Therefore the court below classified the building as type 1 class A 1 and calculated the building depreciation at 1%. In respect of the schedule 1 amenities is concerned, the petitioner's engineer had given report that overhead tank, electric motor, mosaic flooring in staircase, glazed walling in toilet / bath areas, granite pial in kitchen and exterior facade of elevators, marble flooring in room areas, roof bandling and bay windows as architectural elevation, appurtenant land, sun breakers, all round compound wall, elevators, landscaping and gardening area are available in the petition premises and had given 12%. Though engineer of the petitioner had taken 2% for schedule 1 amenities, the amenities provided by the respondent have been taken into account as 7% towards schedule 1 amenities which is quite reasonable.

8. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of A.Emberumanar and another vs. K.Raghava reported in (1987) TLNJ 307, wherein this court held that when the party failed to produce the document, the learned Rent Controller ought to have taken adverse interference for non production of document. In the case on hand, the respondent proved that in respect of amenities provided for the petition premises and court below fixed fair rent of Rs.11,600/-. Therefore, the above judgment is not applicable to the case on hand.

9. He also relied upon the judgment in the case of Bombay Tyres International Ltd. vs Express Newspapers Private Ltd reported in (1987) 2 MLJ 191, wherein it is held as follows:

> 3. In C.R.P. No. 178 of 1984, the landlord has challenged the reduction of its claim inasmuch as the

rent originally asked by it has not been fixed as fair rent. Substantially the two points on which parties seem to be at issue relate to the cost as estimated by the Appellate Authority in respect of basic amenities and Schedule I amenities. In respect of basic amenities, the Rent Controller had estimated the cost to be 10 per cent of the cost of construction. This was enhanced to 15 per cent by the Appellate Authority. In respect of Schedule I amenities, the Rent Controller had arrived at an ad hoc figure of Rs. 10,000 which was, however, enhanced by the Appellate Authority at Rs. 46,788 being 5 per cent of the cost of construction. Now, so far as the basic amenities are concerned, which are in the nature of facilities for water supply, electrical fittings and the drainage system, the Rent Controller has merely observed that he was inclined to award 10 per cent of the cost of construction as the value of the amenities. Now the Rent Controller himself has come to the conclusion that the cost of construction at the rate of Rs. 32 per sq. ft. would come to Rs. 27,750. In so far as the basic amenities are concerned the relevant provision of law is in Section 4(5)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, which provides that the cost of construction of the building including cost of internal water-supply, sanitary and electrical installations shall be determined with due regard to the rates adopted for the purpose of estimation by the Public Works Department of the Government for the area concerned. A further discretion is, however given to the Rent Controller in appropriate cases to allow or disallow an amount not exceeding 30 per cent of the cost of construction having regard to the nature of the cost of construction. I am informed that, so far as the Public Works Department rates are concerned, the maximum rate with regard to the basic amenities referred to in Section 4(5)(a) of the Act is 22-1/2 per cent, allocated as 7-1/2 per cent in the case of water supply, 7-1/2 per cent in the case of sanitary fittings and 7-1/2 per cent for electrical installations. Now it is obvious that the cost of construction which is to be determined is with reference to the time of pendency of the proceedings, because under Clause (b) of sub-Section 5(a) of Section 4 of the Act, a depreciation has to be calculated. The best method would have been to find out what exactly is the cost which has to be incurred for purpose of making available the basic amenities. Since the statute itself indicates that the guideline

> is to be the rate adopted for the purpose of estimation made by the Public Works Department, those rates will undoubtedly be taken into account. There has to be some rational basis with regard to the percentage to be adopted even within the range permissible by the statute before a decision is arrived at with regard to the cost in respect of the provision of the amenities. It must be remembered that even the law contemplates fair rent to be fixed as a return on the investment made by the landlord. In a case of fixation of fair rent, judicial notice must be taken of the fact that cost of construction and cost of materials which have to be used for the construction of a building including the fittings for water supply, sanitary fittings as well as for making electrical installations have always been escalating and are considerably high. Therefore, having regard to the prevailing high level of cost of materials used for construction of a house, there has to be a realistic approach in the matter of estimating the cost of construction and the cost of making amenities available. Therefore, within the range prescribed by the statute the percentage has to be fixed on a realistic basis. This can only be done after ascertaining the normal cost of material necessary for providing the basic amenities. Assuming for the sake of argument that the cost of construction of a building is Rs. 1,00,000 without of course including the water supply facilities, drainage facilities and electrical fittings, I think judicial notice can be taken of the fact that within only 10 per cent of this cost, it is hardly possible to meet the cost of these amenities. Therefore, it cannot be said that the increase of the percentage from 10 per cent to 15 per cent as awarded by the Appellate Authority is so excessive which should be interfered with in these revision petitions.

10. As discussed above, this judgment is also not applicable to the case on hand since the engineer of the petitioner herein contended that depreciation has to be calculated at 1%. Therefore, fixation of fair rent by the court below is correct and does not suffer from any infirmity or irregularity. That apart, the respondent filed RCOP for fixation of fair rent in the year 2009. The premises is also located in the posh area and till today the petitioner is paying only admitted rent and therefore, nothing warrants interference from this Court and this civil revision is liable to be dismissed.

11. Accordingly, this civil revision petition is dismissed. No order as to costs.

-s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To

1.The VII Judge, Small Causes Court,
Chennai

2.The XII Judge, Small Causes Court,
Chennai

+1 CC to Mr.K.P. Ashok, Advocate sr 2041.

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BS(CO)
SP(01/09/2021)